

Sotomayor stated that justices should not use foreign or international law, but they should consider the ideas they find in such materials in their decision-making.

I understand, at this hearing, Judge Sotomayor disavowed the use of such materials to have any influence on jurisprudence, and I welcome that disavowal. What she left unexplained, to my satisfaction at least, however, is her view in the speech that such materials can help us decide our issues; her praise for the use of such law in *Lawrence v. Texas*, which expressly relied on that European human rights decision; and, perhaps most puzzling of all, her endorsement and her praise for Justice Ginsberg's view when it's well known that Justice Ginsberg, in contrast with, say, Justice Scalia, believes that such materials are relevant to decision-making.

Indeed, Justice Ginsberg says that they're nothing less than the basic denominators of fairness between the Governors and the governed.

Foreign and international law may well contain good ideas, as Justice Sotomayor suggested, but so many other sources that have no weight and should not, I think, routinely be cited as authority.

To put the question in perspective, undoubtedly, the Bible and the Quran have many legal ideas that many people think are good, but we would be rightly concerned if judges used them as guidance for interpreting the Constitution or even routinely cited them.

Depending on what text the judge cited and what she omitted, we might think she was biased in favor of one tradition at the expense of others.

In my view, the rule of law itself ultimately is founded on the proposition that only material that is formally relevant should have weight in a judge's decision, and the way a judge can demonstrate adherence to the rule of law in this context is extremely simple—simply refrain from appealing to the authority of foreign or international law in her opinion.

Thank you very much.

[The prepared testimony of Mr. McGinnis appear as a submission for the record.]

Senator KLOBUCHAR. Thank you very much, Professor McGinnis. Last, but not least, we have Professor Rosenkranz. Nicholas Quinn Rosenkranz is an associate professor at Georgetown University Law Center. After graduating from Yale Law School, he clerked for Judge Frank Easterbrook on the U.S. court of appeals for the seventh circuit and for Justice Anthony Kennedy on the U.S. Supreme Court. He then served as an attorney advisor at the Office of Legal Counsel in the United States Department of Justice.

You should know, Mr. Rosenkranz, that Judge Easterbrook was my professor at law school and I know that must have been kind of a tough clerkship. I am sure you had to work very hard. So we look forward to hearing your testimony. Thank you.

**STATEMENT OF NICHOLAS QUINN ROSENKRANZ, PROFESSOR,
GEORGETOWN UNIVERSITY LAW CENTER**

Mr. ROSENKRANZ. Madam Chair, thank you. Ranking Member Sessions, members of the Committee, I thank you all for the opportunity to testify at this momentous hearing.

I, too, have been asked to comment on the use of contemporary foreign legal materials in the interpretation of the U.S. Constitution. I agree entirely with Professor McGinnis's analysis.

In my remarks, I'll try to explain why this sort of reliance on foreign law is in tension with fundamental notions of democratic self-governance. I should emphasize that I, too, take no position on the ultimate question of whether Judge Sotomayor should be confirmed, and I offer my comments with the greatest respect. But I am concerned that her recent speech on this issue may betray a misconception about how to interpret the United States Constitution.

In this room, and at the Supreme Court, and in law schools, and throughout the nation, we speak of our Constitution in almost metaphysical terms. In the United States, we revere our Constitution. And well we should; it is the single greatest charter of government in history. But it is worth remembering exactly what it is that we revere. The Constitution is a text. It is comprised of words on parchment. A copy fits comfortably in an inside pocket, but copies don't quite do it justice. The original is just down the street at the National Archives, and it is something to see. It is sealed in a titanium case filled with argon gas, and at night it is kept in an underground vault. But during the day, anyone can go and see it and read it, and everyone should. The parchment is in remarkably good condition. And the words are still clearly visible.

The most important job of a Supreme Court justice is to discern what the words on that piece of parchment mean. The job is not to instill the text with meaning. The job is not to declare what the text should mean. It is to discern, using standard tools of legal interpretation, the meaning of the words on that piece of parchment.

Now, sometimes the meaning of the text is not obvious. One might need to turn to other sources to help understand the meaning of the words. One might, for example, turn to the Federalist Papers or to early Supreme Court cases to see what other wise lawyers thought that those words meant.

But what the Supreme Court has done in two recent and controversial cases is to rely on contemporary foreign law in determining the meaning of the United States Constitution. And this is the practice that Judge Sotomayor seemed to endorse in her recent speech. But when one is trying to figure out the meaning of the document down the street at the Archives, it is mysterious why one would need to study other legal documents, written in other languages, for other purposes, in other political circumstances, hundreds of years later and thousands of miles away. To put the point most simply, as a general matter, it is unfathomable how the law of, say, France, in 2009, could help one discern the original public meaning of the United States Constitution.

Those who would rely on such sources must be engaged in a different project. They must be trying to update the Constitution to bring it in line with world opinion. To put the point most starkly, this sort of reliance on contemporary foreign law must be, in essence, a mechanism of constitutional change.

Foreign law changes all the time, and it has changed continuously since the Founding. If modern foreign law is relevant to con-

stitutional interpretation, it follows that a change in foreign law can alter the meaning of the United States Constitution.

And that is why this issue is so important. The notion of the court “updating” the Constitution to reflect its own evolving view of good government is troubling enough. But the notion that this evolution may be brought about by changes in foreign law violates basic premises of democratic self-governance. When the Supreme Court declares that the Constitution evolves—and it declares further that foreign law may affect its evolution—it is declaring nothing less than the power of foreign governments to change the meaning of the United States Constitution.

And even if the court purports to seek a foreign “consensus,” a single foreign country might tip the scales. Indeed, foreign governments might even attempt this deliberately. France, for example, has declared that one of its priorities is the abolition of capital punishment in the United States. Yet surely the American people would rebel at the thought of the French Parliament deciding whether to abolish the death penalty—not just in France, but also thereby, in America.

After all, foreign control over American law was a primary grievance of the Declaration of Independence. It, too, may be found at the National Archives, and its most resonant protest was that King George III had “subject[ed] us to a jurisdiction foreign to our constitution.”

This is exactly what is at stake here—foreign government control over the meaning of our Constitution. Any such control, even at the margin, is inconsistent with our basic founding principles of democracy and self-governance.

I hope that the Committee will continue to explore Judge Sotomayor’s views on this important issue. Thank you.

[The prepared testimony of Mr. Rosenkranz appear as a submission for the record.]

Senator KLOBUCHAR. Thank you very much, to all of you. Just to clarify, Mr. Rosenkranz, the one case that Judge Sotomayor considered on the death penalty, she actually sustained it. She rejected a claim that it did not apply and I do not think she used foreign law at all to say that it did not apply. She actually sustained the death penalty. Are you aware of that case, the *Heatley* case?

Mr. ROSENKRANZ. Yes, I am aware of it. I am referring primarily to the speech that she gave on this topic.

Senator KLOBUCHAR. Okay. Well, I would say that her opinion probably rules, if you look at how she actually ruled on this. She did not say that you could not have the death penalty because of French law. Thank you.

Ms. Romero, I had some questions about your testimony. You talked about the fact that Ms. Sotomayor’s opinions are characterized by a diligent application of the law, reasoned judgment, and an unwavering commitment to upholding the Constitution and Supreme Court precedent.

Do you want to talk to me about how you reached that conclusion?

Ms. ROMERO. We have a Supreme Court committee, as I mentioned, and the committee conducted a thorough review of her background. In addition to reviewing about 100 of her cases, we

commissioned a review by a group of law professors who reviewed about 100 of her cases.

We reviewed many of her speeches and articles and, also, spoke to dozens of colleagues and people who know her. So we conducted a fairly extensive due diligence. So our conclusion is based primarily on our review of her cases, which I think is what really should prevail here.

Senator KLOBUCHAR. You also noted in your remarks that the judge's opinions can't be readily associated with a particular political persuasion or judicial philosophy, and I think that may be reflected in the fact that she has been endorsed—in our last panel, Louis Freeh, who had been appointed by George H.W. Bush and, also, served as the FBI director.

We had the Fraternal Order of Police, the largest police organization in the country. We have had the National District Attorneys Association that supports her and, in fact, a review of her sentences shows that she is right in the mainstream.

I questioned her yesterday about some of her white collar sentences were actually quite lengthier than some of her colleagues. Do you want to talk about what you mean by that her opinions cannot be readily associated with a particular political persuasion or judicial philosophy?

Ms. ROMERO. Well, there is no pattern that emerges of an activist judge here. It is quite apparent that her opinions are highly driven in that she relies extensively on the application of the law to the facts that face her.

Senator KLOBUCHAR. Thank you. Mr. Shaw, do you want to comment a bit about what she was like in high school? You said she was judicious and I was trying to imagine if I was judicious in high school.

But you did know her from Cardinal Spellman High School. Is that correct?

Mr. SHAW. Cardinal Spellman High School in the Bronx and her temperament was even-keeled, calm. She was very thoughtful, fair-minded. She treated all individuals equally. She exhibited many of the qualities that she exhibits now.

Some of the testimony I have heard here is delivered by people who don't know her and, frankly, who won't let the facts get in the way. It has nothing to do with who she is. But I understand part of what goes on at these hearings.

Her career is one that has been very extensive as a judge and I cannot tell you that she would rule in the way that I would want her to rule in every case if she were confirmed to the Supreme Court. She hasn't done that in her career so far.

But I don't think that's the standard. I think that all any of us can expect and hope for and want is that she is fair, open-minded, and that she applies the law to the facts, and, clearly, her record has done that. Her speeches are not how she should be judged. It's her 17-year record on the bench.

Senator KLOBUCHAR. Thank you. In fact, I imagine you might not have agreed with some of the decisions. I think we found out that of the discrimination claims that are brought before her, she rejected 81 percent of them and, of course, had found for some of them.

So I think it is a tribute, Mr. Shaw, that you would still be here knowing that you may not have agreed with her on every single decision that she made. Thank you very much.

Mr. SHAW. Thank you.

Senator KLOBUCHAR. Senator Sessions.

Senator SESSIONS. I want to recognize Senator Kyl and let him have my time now. But I would just note Senator Kyl is a superb lawyer, senior member of this Committee, involved in the leadership of the Senate. So I know that is why he has had to get back over right now, because a lot of things are happening.

He also has argued three cases before the U.S. Supreme Court, which very few lawyers in this country can have the honor of ever arguing one.

Senator KYL. Thank you, Madam Chairman. Thank you, Senator Sessions. Just to give you one idea about what it is like to be in leadership, we are trying to figure out right now, and the reason I have been consulting my Blackberry, while listening out of both ears to your testimony, and I thank all of you for being here, is we are trying to figure out if we are going to come back here and vote at 1 a.m. tomorrow morning or we are going to try to have three different votes here yet this evening and not come back at 1 a.m., the kinds of things Senators consider all the time.

Again, let me thank all of you. First, with regard to the last two panelists, I very much appreciate your discussion of foreign law. It is a subject that I think this Committee needs to pay a lot more attention to.

Judge Sotomayor has said two contradictory things and it will be up for us to try to square which will, in fact, govern her decisions on the Supreme Court, should she be confirmed.

She said, on the one hand, on numerous occasions, that she thinks that foreign law should be considered and that she agreed with Justice Ginsberg and disagreed with Thomas and Scalia. I think, Mr. Rosenkranz, you pointed out what that means in terms of the use of foreign law.

Yet, she has said here, even, I think, this morning, that she does not think foreign law should be used in interpreting the Constitution or statutes. So we are left to wonder and I guess we will just have to try to figure that out.

I also wanted to specifically ask Tim Jeffries a question. I know Tim Jeffries and I know of his considerable work on behalf of victims of crime, and that is why I think you are a good person to answer this question, Tim.

To me, there is one place where empathy does play a role in a judge's decisions and I can think of only this one situation, and it is at the time of sentencing, when at least some states and the Federal Government now allows persons who are not parties before the court to make statements before the court at the time of sentencing.

That is a time where, to the extent there is discretion with respect to sentencing, a judge can take into account what people tell him about the victim, about the defendant, about other matters, and empathy cannot help but play a role in that.

Could you just remind us, from your perspective of having worked for victims' rights now, why it is important for judges to

consider the point of view of victims, in this particular situation, in sentencing statements or in the other situations in which it is appropriate for a victim or a victim's advocate to make an appearance in a given case?

Mr. JEFFRIES. Thank you, Madam Chairman, Senator Kyl. As you know, in the U.S. Constitution, there are over 20 references to defendants' rights. There are no references to victims' rights.

Currently, under the Crime Victims' Rights Act, which is Federal law, there are statutory protections for victims of Federal crimes, which those protections provide the right to be informed, to be present, to be heard. But that is just for Federal crimes.

If you look at the states in our great union, it is a patchwork quilt of victims' protections and in upwards to 15 states, there are no victims' protections whatsoever. It is challenging enough that incomprehensible crime is committed in our country. Fifty people will be murdered today, 760 people will be raped today, over 3,000 people will be assaulted, and over 4,000 children will be abused.

It's incomprehensible and as if that is not tough enough, when people enter the justice system, which should exist to do just things, revictimization often takes place.

Judge Sotomayor is a great American story, valedictorian of her grade school, valedictorian of her high school, the Pyne Prize at Princeton, summa cum laude, phi beta kappa, editor of the Yale Law Journal. She has written 380 opinions. She has given over 180 speeches. Even today, she said, "It's important to use simple words," and I quote.

So I can assure everyone here that when a victim, a victim's family is in a courtroom, above and beyond the fact that they're looking for justice that the system should mete, they're looking for the kindness that a just system should provide.

And whereas I continue to be very impressed with the honorable Judge Sotomayor's story and her record of accomplishment and all the incredible witnesses that have come to support her, I'm extremely concerned that a jurist who understands how important words are, through several decades of speeches, could be so cavalier as it pertains to victims' feelings.

And as I stated in my prepared remarks, forgiveness and mercy are one thing. Justice and accountability are another thing. And so I am just hopeful, I am prayerful that if Judge Sotomayor is confirmed to our nation's highest court, that she will never lose sight of what I'm sure were some very hard days she spent as a prosecutor.

And with all due respect to the troubled lives of guilty criminals, we should be focused on victims.

Senator KYL. Thank you. Thank you, all panelists.

Senator KLOBUCHAR. Thank you very much. Senator Kaufman.

Senator KAUFMAN. I just have a few questions. Ms. Romero, can you tell us what Judge Sotomayor's confirmation would mean to your organization, the long struggle for greater diversity on the Federal bench?

Ms. ROMERO. It's not only about our organization. I think it's about all Americans. It's about all Americans seeing themselves reflected at the highest levels of our profession.

It's about public trust in the integrity of the judicial system. It's about public faith and public understanding about the law. On the day that Justice Souter announced his retirement, I was in New Mexico speaking to a group of high school students, 600 high school students, primarily Hispanic, in an underserved area of New Mexico, of Albuquerque, and I told them, "I'm going to speak with you for about 5 minutes, give me 5 minutes, and if you want to, afterwards, I will answer any questions you want."

I spoke to them for 5 minutes. Then they asked me questions for 40 minutes. So I was very proud of the fact that they were enormously interested in the law. But some of the questions were a little bit more than troubling in the sense that they reflected some distrust in their interactions with the judicial system and on how the community interacts with the judicial system.

So one of our missions as a bar association is to try to educate youngsters about the fact that the law really is fair and is just and that it reflects them and that it is accessible to them. So it's about that, it's about access.

Senator KAUFMAN. Professor Shaw, can you tell us, just from your vast background, just a little bit about the function of legal defense funds and how they serve society?

Mr. SHAW. Sure. I worked for almost 26 years for the NAACP Legal Defense Fund, ending up being director, counsel and president. The Legal Defense Fund is the organization that was borne out of the NAACP, which I consider to be and I think most historians would consider to be the oldest civil rights organization in this country, even though another claim has been made here today.

But the Legal Defense Fund litigated *Brown v. Board of Education* and many of the major civil rights cases on behalf of African-Americans, but also others. PRLDEF was modeled after the Legal Defense Fund, as were many other legal defense funds, including some of the conservative legal defense funds that now exist in other institutions in other parts of the world.

One of the things I would underscore, because I listened with great interest to some of the things that some of the witnesses said about Judge Sotomayor's role as a board member, I know that as deputy director of the Legal Defense Fund and then director-counsel, we made sure that the board understood its role and the staff understood its role.

The board was not responsible for the selection of cases or responsible for legal strategy. In fact, I worked very hard to make sure that those lines remain drawn. That's not to say that the board didn't get engaged in policy, but the staff and the lawyers and the leadership of the organization have responsibility for legal strategy and, also, for deciding what cases would be filed.

And I think that's pretty much the way most legal defense funds, including PRLDEF, operated.

Senator KAUFMAN. Thank you very much. I want to thank the entire panel for being here today.

Senator KLOBUCHAR. Senator Sessions.

Senator SESSIONS. Thank you. Thank all of you. This is another good panel and I think it is enriching our discussion. These will all be part of the record. It is reflective of a commitment that the Sen-

ate should make and must make to make sure this process is handled correctly. So thank you all.

I think the foreign law matter is a big deal to me. Some people make out like it is nothing to this, this is just talk. But it is baffling to me how a person of discipline would think that foreign opinions or foreign statutes or U.N. resolution could influence the interpretation of an American statute, some of which may be 1970, 1776.

I think you mentioned, Mr. Rosenkranz, that Americans revere the Constitution. I remember at a judicial conference, 11th circuit, Professor Van Alstine said that if you respect the Constitution, if you clearly respect it, you will enforce it as it is written, whether you like it or not; if you don't do that, then you disrespect it and you weaken it.

And the next judge, someday further down the line, will be even more likely to weaken it further and just because you may like the direction somebody bent the Constitution this year in this case does not mean you are going to like it in the future, and our liberties then become greater at risk.

Would you agree with that?

Mr. ROSENKRANZ. Absolutely, Senator.

Senator SESSIONS. Ms. Rao, you discussed of these philosophies. How do you feel about that? Ms. Rao, I am not a legal philosopher and one of the level thoughts I have had in the back of my mind, I think Judge Sotomayor would have been better served to stay away from legal philosophers. It may be the way her momma raised her and so forth. But legal philosophies are another thing.

But she expressed some affirmation of legal realism. Is that not a more cynical approach to the law in which the theory is somewhat to the effect that, well, it is not realistic to be idealistic about words having definite meanings and we all know judges do differently.

Is that a fairly decent summary of that and the danger of that philosophy?

Ms. RAO. I think that is one of the dangers of legal realism. I think that there are two parts of legal realism. There is one part that is largely descriptive, which is that legal realism means that often a judge's viewpoint is going to influence their judging, and I think that everyone recognizes that's a possibility.

But I think many people go a step beyond that to say, well, a judge's individual views should shape their judging, and I think that is a big step.

Senator SESSIONS. So in this law review article, you have read that. Did you read the law review article she wrote? I am not sure it is an explicit endorsement, but it is certainly an affirmation of that philosophy in many ways in her references to it. Would you agree?

Ms. RAO. It seemed that way to me, as well. And I think it's also supported by her other statements in which she has said that there is no objective stance in judging. I think that is all part of the same general idea.

Senator SESSIONS. And there were only perspectives, was that the language? Do you remember those words?

Ms. RAO. Only a series of perspectives.

Senator SESSIONS. That does not mean much to me. I am not sure I am comfortable with a judge who thinks things are just a series of perspectives.

Have any of you been familiar with the French judicial philosophy that involves single decisions? I am told it is a technique that the French courts utilize to have—my time has—

Senator KLOBUCHAR. You can keep going. Just speak in French from now on.

Senator SESSIONS. I studied it for 2 years. My understanding is that the French courts frequently use very short, unsigned opinions, without dissents and without discussion. So it is very difficult to understand the principle behind their approach to law.

So I just wonder about that. Are you familiar? I didn't see any. Thank you all for your comments and thoughts. We appreciate it very much. This is an important issue and we value your insight.

Senator KLOBUCHAR. Thank you very much, Senator Sessions. And I wanted to thank all of you, as well. Actually, Mr. Rosenkranz, I did appreciate your testimony. I think it is a valued issue to discuss. But I just wanted to make it clear, when I asked you that question about the case, in fact, Judge Sotomayor has written or joined more than 3,000 opinions in her 17 years as a judge and she has never used foreign law to interpret the Constitution or statutes, and including the case I mentioned. That does not mean that it is not a valid point to discuss.

Mr. ROSENKRANZ. She has never used foreign law to interpret the Constitution. I think she may have used it to interpret a Federal statute.

Senator KLOBUCHAR. The point of the issue is that when you brought up the death penalty in the French system, is that she had not used foreign law. In fact, she sustained the death penalty in that case. Thank you.

Senator SESSIONS. There is a national debate. Just Ginsberg favored that in her speech. She endorsed the Ginsberg model and criticized the Scalia model.

Senator KLOBUCHAR. And then one last thing that I wanted to put on the record, a July 9 New York Times article entitled "Sotomayor Meted Out Stiff Prison Terms, Report Indicates," in which it states that, "Most striking was the finding that across the board, Judge Sotomayor was more likely to send a person to prison than her colleagues. This was true whether the offender was a drug dealer or had been convicted of a white collar crime."

[The article appear as a submission for the record.]

Senator SESSIONS. Well, on that subject, I would point out that the Washington Post study found that her criminal justice decisions were on the left side of the Democratic judges.

Senator KLOBUCHAR. You know what, Senator Sessions. We will put both articles in the record. Very good.

Senator SESSIONS. Good deal. Mine is already in the record.

Senator KLOBUCHAR. Great. I just want to thank all of you. I know all of your thoughts were heartfelt and well researched. Especially, thank you, Mr. Jeffries, for coming with a difficult situation. I am so sorry about what happened to your brother.

We are going to break for 5 minutes and then Senator Kaufman is going to be taking over this next panel, our last panel. Thank you very much.

Senator SESSIONS. I would note for the record it is highly unlikely that I would be a ranking member and that Senator Kaufman would be chairing this Committee. What a remarkable development that is.

Senator KLOBUCHAR. Exactly. Just for everyone's knowledge, Senator Kaufman was Senator Biden's chief of staff for many, many years and took over his seat, and so now he is going to be chairing this Committee hearing.

Ms. ROMERO. Madam Chair, if I may?

Senator KLOBUCHAR. This is just a free-for-all. Ms. Romero, please comment.

Ms. ROMERO. No, I'm not commenting. I was just going to ask to ensure that the longer statement can be submitted and inserted into the record.

Senator KLOBUCHAR. Certainly. Everyone's longer statements will be included in this record for all of the panels. So thank you very much. We will recess for 5 minutes and we will return.

[Whereupon, at 6:57 p.m., the Committee was recessed.]

After Recess [7:07 p.m.]

Senator KAUFMAN. We will now call our final panel, saving the best for last, consisting of Patricia Hynes, Dean JoAnne Epps, Mr. David Rivkin, and Dr. Stephen Halbrook.

Before we start, Michael J. Garcia was supposed to be here today but—be here for the hearing, but he thought it was going to be tomorrow. We all thought it was going to be tomorrow. Welcome to the Senate. You never know when things are going to happen. Without objection, what I would like to do is put his statement in the record.

[The prepared statement of Mr. Garcia appear as a submission for the record.]

Senator KAUFMAN. Also, Congressman Serrano is going to try to make it, but why don't we do first—you know, as with in all the prior panels, all witnesses, as you know, are limited to 5 minutes for their opening statements. Your full written statement will be put in the record. Senators will then have 5 minutes to ask questions of each panel.

I would now like to ask the witnesses to stand and be sworn. Do you swear that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. HYNES. I do.

Ms. EPPS. I do.

Mr. RIVKIN. I do.

Mr. HALBROOK. I do.

Senator KAUFMAN. Thank you.

Our first witness is Ms. Patricia Hynes. Patricia Hynes is president of the New York City Bar Association, a former Chair of the American Bar Association's Standing Committee on the Federal Judiciary. She is also a senior counsel of Allen & Overy, LLP. She was Assistant U.S. Attorney in the Southern District of New York and clerked for Judge Joseph Zavatt in the U.S. District Court for

the Eastern District of New York. She is a graduate of Fordham Law School.

Ms. Hynes, I look forward to your testimony.

**STATEMENT OF PATRICIA HYNES, PRESIDENT, NEW YORK
CITY BAR ASSOCIATION**

Ms. HYNES. Thank you. Thank you, Chairman Kaufman, Ranking Member Sessions, and Senator Whitehouse. I am the president, current president of the Association of the Bar of the city of New York, and I appreciate the opportunity to speak to you this evening regarding the nomination of Judge Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

I am joined this evening by Lynn Neuner, who is sitting right behind me, who chaired the Subcommittee of our Executive Committee that conducted the evaluation of Judge Sonia Sotomayor.

As this Committee is aware, the Association of the Bar of the city of New York is one of the oldest bar associations in the country, and since its founding in 1870 has given priority to the evaluations of candidates for judicial office. As far back as 1874, the association has reviewed and commented on the qualifications of candidates for the U.S. Supreme Court.

It is a particular honor for me to participate in this confirmation process for this particular nominee.

In May 1987, our association adopted a policy that directs the Executive Committee, our governing body, to evaluate all candidates for appointment to the U.S. Supreme Court. The Executive Committee has developed an extensive procedure for evaluating Supreme Court nominees, including a process for conducting research, seeking views of persons with knowledge of the candidate, and of our membership of more than 23,000 members of the New York Bar and other bars. We evaluate the information we receive and express a judgment on the qualification of a person nominated to the U.S. Supreme Court.

In 2007, the Executive Committee of the association moved to a three-tier evaluation system by including a rating of "Highly Qualified." This is the first time the association has used the three-tier rating for a nominee to the Supreme Court.

In evaluating Judge Sotomayor's qualifications, the association reviewed and analyzed information from a variety of sources. We reviewed more than 700 opinions written by Judge Sotomayor over her 17 years on both the circuit court and the district court. We reviewed her speeches, articles, her prior confirmation testimony, comments received from members of the association and its committees, press reports, blogs, commentaries, and we conducted more than 50 interviews with judicial colleagues, former law clerks, numerous practitioners, as well as an interview with Judge Sotomayor herself.

The Executive Committee, on evaluating the qualifications of Judge Sotomayor, passed a resolution at its meeting on June 30th finding Judge Sotomayor highly qualified to be a Justice of the Supreme Court based upon the committee's affirmative finding that Judge Sotomayor possesses to an exceptionally high degree all of the qualifications enumerated in the association's guidelines for evaluations of nominees to the Supreme Court, and those guide-